

24-5994

No. _____

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OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID RODRIGUEZ — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF CRIMINAL APPEALS OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID RODRIGUEZ #02098768

(Your Name)

WAINWRIGHT UNIT

2665 JOVIAN M. BOULEVARD

(Address)

LOVE LADY, TEXAS, 75851

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION PRESENTED

Did The Court Of Criminal Appeals Of Texas err in holding that The Trial Court did not abuse its discretion and violate Rodriguez Fourteenth Amendment Right under the Due Process Clause and his Sixth Amendment Right , the Right to be heard, to offer testimony of witness, the right to present a defense, and the right to effective assistance of counsel? And/or failing to offer Rodriguez the minimal requirement's of Due Process and commit legal error by ignoring the law and ruling without guiding principles, adversely effecting the interest of the public generally along with the fundamental constitution, and the procedural Rights of the accused? When the trial Court and/or Judge Sid Harle denied four timely filed Motions To Dismiss Counsel without an inquirey and/or hearing, and going so far as to walk out of the court room while Petitioner Rodriguez was trying to file Motions and address the Court and/or Judge Sid Harle of the issues between him and his trial counsel.

LIST OF PARTIES

[X] All parties appear in the caption on the cover page.

RELATED CASES

Rodriguez v. State No. 2013-CR-8655, in The 226th District Court, Bexar County Texas, Judgment entered December 17, 2013.

Rodriguez v. State No. 04-14-00034, in The Fourth Court Of Appeals San Antonio, Texas. Judgment entered June 17, 2015.

Ex Parte David Rodriguez v. The State Of Texas No. WR-95,606-01, in The Court Of Criminal Appeals Of Texas. Judgment entered May 1, 2024.

Ex Parte David Rodriguez v. The State Of Texas No. PD-0432-24, in The Court Of Criminal Appeals Of Texas. Judgment entered July 31, 2024.

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Appendix B: Decision of The 226th District Court, Bexar County, Texas, Rodriguez v. State No. 2013-CR-8655, Guilty of murder with a deadly weapon , Life sentence with the possibility of parole.

Appendix C: Decision of The Court Of Criminal Appeals of Texas, Ex Parte David Rodriguez v. The State of Texas No.WR-95, 606-01 Petition to file an Out of Time Petition For Discretionary Review granted.

Appendix D: Decision of The Court of Criminal Appeals of Texas, Ex Parte David Rodriguez v. The State of Texas No. PD-0432-24, Petition For Discretionary Review, Refused.

Appendix E: Jacobs v. State 594 S.W. 3d 377 (2019) San Antonio Express Newspaper article.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

The petitioner, David Rodriguez respectfully prays that a writ of certiorari issue to review the judgment and opinion of The Fourth Court Of Criminal Appeals San Antonio, Texas rendered June 17, 2015.

OPINIONS BELOW

The opinion of The Fourth Court Of Appeals San Antonio, Texas Affirmed petitioners conviction No. 04-14-00034-CR appears in Appendix A to the petition and is unpublished.

The opinion of The 226th District Court, Bexar County, Texas Guilty of Murder No.2013-CR-8655 appears in Appendix B to the petition and is unpublished.

The opinion of The Court Of Criminal Appeals Of Texas No.WR-95,606-01, Granting Petitioners out of time Petition For Discretionary Review appears in Appendix C and is unpublished.

The opinion of The Court Of Criminal Appeals Of Texas, No. PD-0432-24, Petition For Discretionary Review refused appears in Appendix D and is unpublished.

JURISDICTION

The date on which the highest state court The Court Of Criminal Appeals Of Texas, decided my case was July 31, 2024 a copy of that decision appears at Appendix D.

Petitioner did not receive notice the above stated court dated August 8, 2024 stating he had 15 days from date of refusal July 31, 2024 to file for a rehearing until August 19, 2024. Four days past the 15 day deadline to file for a rehearing . Petitioner decided not to file for an extension but to proceed with a Petition For Writ Of Certiorari.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is Invoked Under 28 U.S.C. §1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.CONST.,AMEND.I

Congress shall make no law respecting an; or abriging the freedom of speech; and to petition the Goverment for a redress of grievance

U.S.CONST.:VI

In all criminal prosecutions, the accused shall enjoy the right; to be confronted with the witnesses against him; to have cumpulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S.CONST.:AMEND.XIV

All persons born or nuturalized in the United Staes, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherin they reside, no state shall make or deprive any person of life ,liberty ,or property, without due process of the law, nor deny to any person within it's jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Rodriguez was found guilty of murder with a deadly weapon and sentenced to life with the possibility of parole by a jury on December 17, 2013 (Rodriguez v. State No. 2013-CR-8655), App.B. The Fourth Court Of Criminal Appeals San Antonio Affirmed this conviction on June 17, 2015 (Rodriguez V. State No. 04-00034-CR), App.A. An Out Of Time Petition For Discretionary Review was granted from The Court Of Criminal Appeals Of Texas on May 1, 2024 (Ex Parte David Rodriguez v. The State Of Texas No. WR-95,606-01), App.C. The Petition For Discretionary Review was Refused from the The Court Of Criminal Appeals Of Texas (Ex Parte David Rodriguez v. The State Of Texas No. PD-0432-24), App.D.

Rodriguez filed a Motion To Dismiss Counsel on November 8, 2013 one month before the jury was picked and the trial began on December 9, 2013 by mail Rodriguez received no response. Rodriguez then tried to file and/or hand the Courts and/or Judge Sid Harle a Motion To Dismiss Counsel, a Motion For Continuance, a Motion To Suppress Evidence Of Illegal Arrest, a Motion To Discover Criminal Record Of Witness, a Motion For Brady Material, a Motion To Produce Gaskin Material, and a Motion For Order To Require State To Disclose Prior Acts Of Misconduct on November 12, 2013 at a pre trial hearing. The Court and/or Judge Sid Harle refused to accept all Motion's because Rodriguez's counsel were not there to sign and file and/or hand them to him. Motions Rodriguez had been telling his attorneys to file for months. Rodriguez later on November 12, 2013 filed a Motion To Dismiss Counsel by mail. Rodriguez received no response. Rodriguez filed another Motion To Dismiss Counsel on

November 25, 2013. Rodriguez received no response. Rodriguez again tried to file a Motion To Dismiss Counsel with all the above stated Motion,s in person to The Courts and/or Sid Harle. tried to address the Courts with the problems he was having with his trial counsel in an attempt to get it on the record on December 9, 2013 . Not only did Judge Sid Harle not inquire into the reasons why Rodriguez was filing the Motions To Dismiss Counsel, or hold a hearing he also walked out of the court room while Rodriguez was trying to address The Court and/or Sid Harle himself.

The following colloquy took place between Rodriguez and The Court; Eakle in an attempt to stop Rodriguez from addressing The Court

Eakle: Judge we dont want to make a record necessarily in front of you and opposing counsel.

[Which is exactly what Rodriguez was trying to do.]

The Court: okay, so then the record will be outside my presence. Again you're not entitled to dual representation. Is there something specific?

The Defendant: Yeah, I'm having problems, yeah, with my counsel just all around. and I tried to address you with it the last time but she wasn't here to hand you the motions to dismiss appointed counsel.

The Court: Well actually I got that one in the mail.

The Defendant: Oh,okay

The Court: So I did receive that. And it was, you know denied because it is a--- as we discusses last time, you've got appointed lawyers. You're welcome to hire any lawyer you want to hire, but it's to late to do that at this point because we're picking a jury,

But I did get that in the mail.

Rodriguez was never notified his Motion's were received or denied
Which left Rodriguez asking ;

The Defendant: And -- who would I talk to this to about -- about
the-- I -- really want to get it -- I mean, ther's nothing about
the case-

The Court: You know again, I've gotten things from you in the court's
file. You're welcome to continue to put them in writing and they'll
be filed of record with the other matters but as I said, you're
not entitled to dual representation so I'm not going to rule on
those matters at this point.

Then Judge Sid Harle left the court room, but allowed Rodriguez
and his counsel to make a record outside of his presence [to the
issues Rodriguez was trying to address to The Court and/or Judge
Sid Harle.]

After going back and fourth with his counsel Eakle repeatedly
tried to get Rodriguez to stop talking repeating "David stop"
and change the subject to offer a plea deal which Eakle had already
made, offers without Rodriguez's consent and which the State made
clear this was not a plea bargin case.

The following colloquy took place ;

The Defendant: How many pieces of material, any documented material
thats favorable to my situation or favorable to my defense, have
you given me -- have you personally given me?

Mr Wood: None

The Defendant: Joanne, how many documentation; any thing that I may
go over my self to be favorable in my case have you given me?

Ms Eakle: I'm not on trial here and I'm not answering your question.

Mr Wood: I haven't given you any paperwork because the paperwork that I have, all-- is paperwork that Joanne and I have together.

After Rodriguez's counsel both refused to sign and file his Motion's the following colloquy took place;

The Defendant: The Motion's that I have been asking her to file since April 2013 she barely started to file in August. I mean, this is the information that I have to get through the law library because you don't want to give it to me, you know. It-- it goes on and on about the stuff y'all are not giving me, you know. If y'all don't want to help me, just step down, just tell the Judge you don't want to do nothing for me. You, know, this is what I want you to do. This is what I'm demanding since I'm the client and you're the counsel to file these Motion's for me. Not the other way around the way y'all have been demanding me to do things.

Ms Eakle: [We] are not signing those motions. Will take them and file them, but [we] are not signing them.

When the Judge Sid Harle came back Eakle filed her own Motion To Withdraw As Counsel which she already had prepared corroborating Rodriguez claim and stating;

Ms Eakle: Yes, Judge, At this point I would like to make a Motion To Withdraw As Counsel for David. I've lost my ability to effectively communicate with my client so that it will interfere with my ability to represent him appropriately during the course of this trial.

Judge Sid Harle denied all Rodriguez's Motion's without inquiry, a hearing, or even looking at them stating;

"I'm going to deny since he's not entitled to dual representation",

Eakle's Motion was also denied without inquirey or a hearing in the same manner as all of Rodriguez's. (Rodriguez v. State No. 2013-CR-8655); App.B.

Rodriguez never requested dual representation , and the issues stated without a Judge present about his counsel regarding failin to file motions, and refusing to show and/or give or even let him borrow for inspection exculpatory evidence,Brady material or any material whatsoever favorable to his defense are just two issues out of multiple issues that go beyond harmless error. When the Judge walked out while Rodriguez tried to address the court and his counsel reapeatedly told him to stop talking.

Did the Court of Appeals err Affirming that Rodriguez Right under the First Amendment ; congress shall make no law respecting and arabriging the freedom of speech, and to petition the goverment for a redress of grievances.

And hid Sixth Amendment to have effective assistance of counsel and his Fourteenth Amendment ; no state shall make or deprive any person of life liberty ;or property without due process of law nor deny to any person within it's jurisdiction the equal protect of the laws.; were not violated.

REASONS FOR GRANTING PETITION

It cannot be said by the Court of Appeals that Rodriguez made his motion's at the eleventh hour against the schedule of the Court. The record shows Rodriguez's motion's and attempt's to file his motion's were in fact timely as far as one month before the trial began. All with no response. The break down was so great when Rodriguez would ask his counsel to ask witnesses questions his counsel would refuse and his lack of trust did not allow him to testify in his own defense. Similar to Rodriguez's trial in *Plumlee v. Del Papa*, 465 F.3d 1095 (9th Cir.2006); The lack of trust between Plumlee and his attorney was so severe that Plumlee's attorney not only corroborated Plumlee's claim that the relationship had broken down, but even made his own motion to be relieved. The district court denied the motion. A defendant cannot be expected to cooperate with attorney's he reasonably believes are working behind his back to undermine his defense, reversed and Remanded.

Also in *Bland v. California Dept. of Corrections*, 20 F.3d 1469 (9th Cir. 1994); When reviewing the denial of a motion to substitute counsel for Abuse of Discretion the appellate court considers the following three factors (1.) timeliness of motions; (2.) adequacy of the courts inquirey inti the defendants complaints; and (3.) whether the conflict between the defendant and his attorney was so great that it resulted in a total lack of communication preventing an adequate defense.

In reviewing habeas courpus cases, appellate court should determine whether the constitutional trial error had substantial and injurious effect or in the influence determining the jury verdict. This harmless error analysis applies only to trial errors and not to

structural defects. Because structural defects infect the entire trial process, they defy harmless error analysis. Consequently, structural defects require automatic reversal. Deprivation of counsel is a structural defect requiring automatic reversal.

Reversed and Remanded.

Another trial similar to Rodriguez's Brown v. Craven, 424 F. 2d 1166 (9th Cir. 1970); Brown himself made four motion's that some other attorney be appointed to represent him. The state court denied the motions, without making no adequate inquirey into the cause of Brown's dissatisfaction with his counsel or taking any other steps which might possibly lead to the appointment of substitute counsel in whom Brown could repose his confidence. The result was that Brown was forced into trial with the assistance of a particular lawyer with he would not cooperate, and with whom he would not, in any manner communicate. Thus the attorney was understandably deprived of the power to present any adequate defense for Brown. Brown did not testify in his own behalf; there was only perfunctory defense and the jury found him guilty of murder in the first degree. Since Brown would not communicate with him, it's understandable that the attorney performed his duty, under the gravest handicap. We think however to compel one charged with a grievous crime to undergo a trial with asistance of an attorney with whom he has became embroiled in irreconcilable conflict is to deprive him of the effective assistance of any counsel whatsoever. See; Entsminger v. Iowa, 386U.S.748,87 S.CT 1402 L.Ed.2d 501 (1967); Gideon v. Wainwright, 372 U.S. 335,83 S.Ct 792,9 L.Ed. 2d 799 (1963); Of course, a court is not required to provide an indigent accused of any particular attorney whom he may desire,

and we think that the state court might very properly have required Brown to accept assistance of some of the great number of competent attorneys associated with the public defenders office of Los Angeles. [Rodriguez believes that Bexar County also has a great number of public defenders]. The problem arises in Brown because the state court did not, in our opinion, take the necessary time and conduct such necessary inquiry as might have eased Brown's dissatisfaction, distrust, and concern. And we think it is not unreasonable to believe that had Brown been represented by counsel in whom he had confidence he would have been convicted if at all ~~of no more than the offense of manslaughter~~. See also the "irreconciable conflict" rule; All three cases noted in this section of Brown Reversed and Remanded.

The last case is also similar to Rodriguez's trial and is also from The Fourth Court of Appeals San Antonio, Texas. In Jacobs v. State, 594 S.W. 3d 377 (2019) ; It was found that the trial court abused it's discretion by failing to afford defendant the minimal requirements of Due Process. Trial Judges have a broad discretion in how they conduct business in their courtroom and control their docket. However, a trial Judge's exercise of discretion is not unfettered and does not provide the Judge with a license to violate a defendants constitutional right to Due Process. It is incumbent for a trial Judge to maintain the honor and dignity of the judiciary; uphold administration of justice for the benefit of the citizens of Texas.

Furthermore in Jacob v. State a San Antonio Express Newspaper article reported ; Long time Bexar County Court at Law Judge Wayne Christian was ordered to complete two hours of professional

education after being admonished by the State Commission on Judicial standards for denying a defendant due process.

Christian in a written response to the State Commission on Judicial Standards stated he believed the hearing to be " uncontested and informal"; and that his procedures were the same used by other Judge's and that he has used for 15 years.

[Emphasis Added].

(Jacobs v. State No. 04-18-00750-Cr ; and/or Jacobs v. State, 594 s.W. 3d 377 (2019);) Express Newspaper article App.E.

Reversed and Remanded.

Thus Rodriguez prays this instrument shows the Fourth Court of Appeals San Antonio committed error and this Court grant Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID RODRIGUEZ

Date: OCTOBER 28, 2024

"13-14"